

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



February 27, 2002

TO: ALL PARTIES OF RECORD IN APPLICATION 01-05-012

Decision 02-02-044 is being mailed without the Joint Dissent of Commissioners Lynch and Wood. The Joint Dissent will be mailed separately.

Very truly yours,

/s/ LYNN T. CAREW (by ang)
Lynn T. Carew, Chief
Administrative Law Judge

LTC:eap

Attachment

Decision 02-02-044 February 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SCX, Inc., a California Corporation, for a Certificate of Public Convenience and Necessity to Operate as a vessel Common Carrier in Scheduled and Nonscheduled Service Between San Diego, Oceanside and Marina Del Rey; Request for Interim Authority to Commence a Demonstration Service Between San Diego and Oceanside.

Application 01-05-012
(Filed May 4, 2001)

**OPINION GRANTING APPLICATION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO OPERATE AS A VESSEL COMMON CARRIER IN
SCHEDULED AND NONSCHEDULED SERVICE**

Summary

The application of SCX, Inc. (SCX) to operate scheduled vessel common carrier service between San Diego and Oceanside, and unscheduled vessel common carrier service between San Diego, Oceanside, and Marina Del Rey, is approved, subject to the condition that SCX or protestant Sea Planes, Inc. (Sea Planes) may file a petition to modify our order within six months of commencement of the service.

Background and Procedural History

SCX is a startup corporation organized for the purpose of engaging in the vessel common carrier services at issue here. Specifically, SCX requests authority to commence the operation of a scheduled vessel service between San Diego and Oceanside for commuters under a state-sponsored Traffic Congestion Relief

Program, and to add nonscheduled service to Oceanside and Marina Del Rey as soon as possible after commuter service begins. SCX's plans are predicated upon receipt of a \$5 million State of California Traffic Congestion Relief Program grant to operate the commuter service for the first year. Funds for that program are administered by the San Diego Unified Port District (Port). At the time it filed the application, SCX was a finalist in the Port's selection of an operator for this service.

A timely protest was filed by Sea Planes, the other finalist in the selection process.¹ Sea Planes is a vessel common carrier authorized to operate other scheduled services along the Southern California coast that are not yet operating. Its protest poses questions about the certainty of SCX's funding, the availability of its vessel, and its ability to operate service to Marina Del Rey on as fast a schedule as projected in the application. The ALJ held a telephonic prehearing conference (PHC) on July 25 and ascertained that the Port had not yet decided which party would receive the grant and operate the service. Consequently, with the parties' concurrence, the ALJ continued the PHC until after the Port made its selection.

By letter dated August 23, SCX advised the ALJ that the Port had adopted a resolution authorizing its staff to enter into contract negotiations with SCX for operation of the demonstration commuter service, and to submit the necessary application to the California Transportation Commission. The resolution also authorizes its staff to substitute Sea Planes as the operator if SCX does not possess a suitable vessel within six months. Another resolution authorizes the

¹ The proceeding was reassigned from a staff examiner to Administrative Law Judge (ALJ) Ryerson on July 3, 2001, upon filing of Sea Planes' protest.

Port's staff to enter into a master agreement with CalTrans to accept ferry grant funding.

These actions by the Port obviate the concerns raised by Sea Planes about the availability of funds or the suitability of a vessel for SCX's proposed operation. Moreover, as the Port's choice to be the contingent operator, Sea Planes will step into SCX's shoes if SCX fails to obtain a suitable boat, and the funding will roll over to Sea Planes in that event. A letter from Sea Planes dated August 28 confirmed SCX's selection as operator, with the result that there is no significant material opposition to the application.

The ALJ reconvened the PHC on September 7.² The parties agreed that the application may be decided ex parte if our order grants the parties leave to file a petition for modification for a period of six months after the service begins.

Discussion

According to SCX's application, CalTrans estimates that 14,000 to 16,000 vehicles daily use Interstate Highway 5 between Oceanside and San Diego during rush hours. SCX hopes to divert at least 5 per cent of these commuters to its demonstration vessel service. The fact that the Port has determined it will sponsor and administer the proposed vessel service under the California Traffic Congestion Relief Program is strong evidence of public need for that service, or at least to test, at public expense, whether the need exists.

SCX's preliminary pro forma expense figures project that the first-year cost of operating the commuter service will be \$4.9 million. Its first-year funding for

² No reporter was present at this PHC, and consequently there is no transcript of the proceedings. The matters related here constitute the official record of this PHC.

this service will be \$5 million, and that funding is assured because it has been approved by the Port and is being obtained from CalTrans under the State's subsidy program. This funding exceeds the projected cost of operation by \$100,000. Any additional cost of operating SCX's contemplated nonscheduled service essentially must be recovered from the revenues from that service. SCX has the financial ability to operate the service as a result of this subsidy arrangement and the ability to add nonscheduled service at its discretion.

Although SCX had neither a vessel nor employees to operate the service when it filed its application, these matters clearly are addressed by the Port through its selection and contracting process. Adequate incentives and assurances that the operator will be operationally qualified are guaranteed not only by this process, but also by the Port's right to substitute Sea Planes (a certificated operator) for SCX in the event that SCX is unable to satisfy this commitment. The parties' request to include a condition allowing modification of the order is consistent with this procedure.

This is now an uncontested matter in which the decision grants the relief requested. We will approve the application ex parte.

Findings of Fact

1. There is a public need for a common carrier vessel service to be operated between Oceanside and San Diego on a demonstration basis under the State of California's Traffic Congestion Relief Program.
2. No nonscheduled common carrier vessel service is now operated between San Diego, Oceanside, and Marina Del Rey.
3. SCX is financially fit to operate the services proposed in the application.
4. Adequate assurances exist through the Port's process for selecting and funding the operator of the demonstration project that SCX will be operationally

qualified to operate the service when it commences. Including a provision in the Port's resolution and in the resulting operating contract allowing substitution of Sea Planes for SCX as operator of the service if SCX is unable to furnish a satisfactory vessel, and including provision in our order allowing the parties to file a petition to modify the order within a six-month period after service commences, are consistent with and necessary to making this finding.

5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

SCX's application should be granted, subject to the terms and conditions of the order.

O R D E R

IT IS ORDERED that:

1. Applicant SCX, Inc. (SCX) is granted a Certificate of Public Convenience and Necessity authorizing it to operate as a vessel common carrier as defined in Pub. Util. Code §§ 211 and 238 to transport persons and their baggage between the points set forth in the Appendix VCC-87 hereto, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. State in the tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.

- d. Comply with General Orders Series 87, 111, and 117.
- e. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 403 when notified by mail to do so.

3. Applicant is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to the applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission, and that the U.S. Coast Guard has approved the use of the applicant's vessel for service.

4. The authority to operate as a vessel common carrier as granted herein shall expire unless exercised within 180 days after the effective date of this order.

5. A petition to modify this order may be filed by either party within six months after the date that service actually commences, notwithstanding any provision in our Rules of Practice and Procedure relating to the filing of such petition.

6. Application 01-05-012 is closed.

This order is effective today.

Dated February 21, 2002, at San Francisco, California.

HENRY M. DUQUE
RICHARD A. BILAS
GEOFFREY F. BROWN
Commissioners

We will file a joint dissent.

/s/ LORETTA M. LYNCH
President

/s/ CARL W. WOOD
Commissioner

Appendix VCC-87

SCX, Inc.
(a corporation)

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A VESSEL COMMON CARRIER
VCC-87

Showing vessel common carrier operative rights, restrictions,
limitations, exceptions, and privileges

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

I N D E X

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SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS.

SCX, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to conduct scheduled and nonscheduled vessel common carrier services, for the transportation of passengers and their baggage, between the points described in Section II, subject however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- A. No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.
- B. The term "on-call" service shall be performed at hourly or per diem rates that include the services of vessel and crew, regardless of the number of passengers transported. Transportation shall not be performed on an individual fare basis.
- C. The term "charter" service, as used herein refers to service in which the vessel is engaged, for a specified charge, by a person or group of persons for the exclusive use of said person or group of persons. The tariffs shall show the conditions under which each "charter" service will be rendered. Transportation shall not be performed on an individual fare basis.

SECTION II. ROUTE DESCRIPTION.

A. **SCHEDULED SERVICE**

San Diego-Oceanside

Between San Diego and Oceanside.

B. **NON-SCHEDULED SERVICE**

On-Call and Charter Service

Between San Diego, Oceanside, and Marina Del Rey.